IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 34180 of 2004(R)

PETITIONER:

MADHUSUDHANAN NAMBOOTHIRI,
MANGALASSERI ILLOM, KADUVINAL MURI,
VALLIKUNNAM VILLAGE.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENT:

SASIDHARAN, S.N.VIHAR,
KADATHOOR MURI, THAZHAVA VILLAGE,
KARUNAGAPPALLY TALUK.

BY ADV. SRI.P.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.34180/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE PHOTOSTAT COPY OF THE ORDER IN I.A.NO.2271/2003 IN O.S.NO.296/02 OF THE SUB COURT, MAVELIKARA DATED 25.7.2003.

PIUS C. KURIAKOSE,J.

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W.P.(C)No.34180 of 2004

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Dated: 25th May, 2007

JUDGMENT

The petitioner who is the sole defendant in O.S.No.296 of 2002 on the files of the Sub Court, Mavelikara impugns Ext.P1 order by which his application for reception of written statement was dismissed by the learned Subordinate Judge, on the reason that the same has been filed beyond the period of 90 days of his receiving summons. The issue as rightly submitted by Mr.T.S.Harikumar, counsel for the petitioner is covered in favour of the petitioner by the judgment of the Supreme Court in **Shaikh Salim H.A.K. v. Kumar** [2006(1) KLT Sh.Notes (case No.26) Page 16] and this court in **Sanadhanan Nair v. Cochin Kagaz Ltd.** [2006(4) KLT Sh.Notes (case No.104) Page 75]. Accordingly, Ext.P1 order is set aside. The learned Subordinate Judge who is presently considering the subsequent applications submitted by the petitioner to set aside the ex parte decree and to condone the delay caused in the matter of filing the application will take due note this judgment and the decisions referred to above and will pass appropriate orders on those applications.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**